

§ 58-70-5. Application to Commissioner for permit.

(a) Any person, firm, corporation or association desiring to secure a permit as provided by G.S. 58-70-1, shall make application to the Commissioner of Insurance for each location at which the person, firm, corporation or association desires to carry on the collection agency business as defined in this Article. An The applicant shall be entitled to a permit upon submission to the Commissioner of Insurance of the following:

- (1) The name, trade name if any, street address, and telephone number of the applicant, including any home office address and telephone number, if different.
- (2) If the applicant is a corporation,
 - a. A certified copy of the board of director's resolution authorizing the submission of the application;
 - b. An authenticated copy of the Articles of Incorporation and all amendments thereto;
 - c. An authenticated copy of the bylaws or other governing instruments;
 - d. If the applicant is a foreign corporation, a copy of the certificate of authority to transact business in this State issued by the North Carolina Secretary of State.
- (3) If the applicant is a partnership, an authenticated copy of the then current partnership agreement.
- (4) If an assumed business name is used, certificates showing that the assumed business name has been filed as required by Article 14A of Chapter 66 of the General Statutes.
- (5) A surety bond as required by G.S. 58-70-20. In the case of an alien corporation, the surety bond requirements shall be double the amount set by G.S. 58-70-20.
- (6) A completed statement by each stockholder owning ten percent (10%) or more of the applicant's outstanding voting stock and each partner, director, and officer actively engaged in the collection agency business, containing the name of the collection agency, the name and address of the individual completing the form, the positions held by the individual, each conviction of any criminal offense and any criminal charges pending other than minor traffic violations of the individual, and the name and address of three people not related to the individual who can attest to the individual's reputation for honesty and fair dealings.
- (7) A statement sworn to by an appropriate corporate officer, partner, or individual proprietor giving a description of the collection method to be employed in this State.
- (8) A statement certifying that there are no unsatisfied judgments against the applicant.
- (9) A list of all telephone numbers assigned to or to be used by the applicant in the operation of the collection agency.
- (10) The appropriate permit fee as required by G.S. 58-70-35.
- (11) A balance sheet as of the last day of the month prior to the date of submission of the application, certified true and correct by a corporate officer, partner, or proprietor, setting forth the current assets, fixed assets, current liabilities, and positive net worth of the applicant.
- (12) The address of the location at which the applicant will make those records of its collection agency business described in G.S. 58-70-25 available for inspection by the Commissioner of Insurance.

- (13) A statement certifying that no officer, individual proprietor, or partner of the applicant has been convicted of a felony involving moral turpitude or any violation of any State or federal debt collection law.
- (14) If the collection agency's office or records, as described in G.S. 58-70-25, are located outside of North Carolina, a statement sworn to by an appropriate corporate officer, partner, or individual proprietor consenting to and authorizing the reimbursement, to the Commissioner by the collection agency, of expenses incurred by the Commissioner in conducting routine examinations, audits, and in investigating written complaints against the collection agency or its employees. All reimbursements shall be paid to the Commissioner no more than 30 days after the date of billing. In the case of an alien corporation, the sworn statement must provide that the corporation will make available to the Commissioner for his or her inspection, in North Carolina, those records described in G.S. 58-70-25, at the expense of the corporation.
- (15) If the applicant is a foreign corporation, a statement authorizing the Commissioner to be its agent for service of process, which shall be administered pursuant to the provisions of G.S. 58-16-30.

(b) Repealed by Session Laws 2016-100, s. 6, effective July 1, 2017 – see note for contingency.

(b1) In addition to the information required by subdivision (a)(2) of this section, if the applicant is an alien corporation, the corporation must be owned or majority controlled ultimately by a parent entity incorporated or organized under the laws of the United States or any jurisdiction within the United States, and the alien corporation may only service accounts held by an affiliate or subsidiary of the same parent entity. For purposes of this subsection, "control" is defined by G.S. 58-19-5(2). Should the alien corporation be sold to an entity unrelated to the parent entity, notice shall be provided to the Department of the pending sale 30 days in advance of the sale. Provision of Form 8-K, properly filed with the Securities and Exchange Commission, shall be deemed compliance with the notice requirement of this subsection. In the event of a sale, the new parent entity shall provide evidence to the Department within 30 days of the sale of its and the alien corporation's compliance with the requirements of this section. In the event that the new parent entity does not provide the evidence within 30 days after the sale, the alien corporation's permit shall be automatically suspended until the Department is provided the evidence of compliance which is satisfactory to the Commissioner.

(c) through (o) Repealed by Session Laws 2016-100, s. 6, effective July 1, 2017 – see note for contingency.

(p) In the case of an alien corporation, when the corporation is in violation of this Article, the parent entity must agree to cure the violation by the alien corporation.

(q) For purposes of this Article, the following definitions apply:

- (1) "Alien corporation" means a company incorporated or organized under the laws of any jurisdiction outside of the United States.
- (2) "Foreign corporation" means a company incorporated or organized under the laws of the United States or of any jurisdiction within the United States other than this State.

(r) If the applicant is a subsidiary in a holding company system and if the applicant's ultimate parent regularly files financial information with the U.S. Securities and Exchange Commission, in lieu of complying with subdivision (a)(11) of this section, the applicant may file the ultimate parent company's balance sheet as of the most recent fiscal year-end, as certified by the ultimate parent's independent auditors, and accompanied by a guarantee of the

applicant's performance from the ultimate parent company for the benefit of the Department, limited to those portions of this Article that are applicable to the applicant.

(s) After a permit is issued by the Commissioner, the permittee's ultimate parent, as specified in subsection (r) of this section, shall remain responsible for the guarantee of performance as provided in subsection (r) of this section notwithstanding any change in the corporate structure of the ultimate parent company. If the permittee is acquired by any other person that has control over the permittee, the controlling person shall provide its own guarantee of performance as provided in subsection (r) of this section for the permittee to retain its permit. If the permittee does not have an ultimate parent company, it shall file its own balance sheet as specified in subdivision (a)(11) of this section.

(t) Nothing in this section shall be construed to require that a person, firm, corporation, or association secure a permit for a remote location from which a single employee works under the control and monitoring of a collection agency through telecommunications and computer links, so long as all of the following conditions are met:

- (1) Records required to be kept under G.S. 58-70-25 are not maintained at the remote location.
- (2) The remote location is not held open to the public as a place of business.
- (3) The person, firm, corporation, or association has a valid permit issued pursuant to this Article for at least one physical location in this State. (1931, c. 217, s. 2; 1943, c. 170; 1959, c. 1194, s. 2; 1969, c. 906, s. 2; 1979, c. 835; 1989, c. 441, ss. 2, 3; 2001-269, s. 1.1; 2006-134, s. 1; 2009-566, s. 21; 2016-107, s. 5; 2016-100, s. 6.)